

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Megan Ault	Team: Team # 8	CCRB Case #: 200802652	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 02/16/2008 7:57 PM	Location of Incident: Bruckner Boulevard & White Plains Road	Precinct: 43	18 Mo. SOL 8/16/2009	EO SOL 8/16/2009	
Date/Time CV Reported Sat, 02/16/2008 7:57 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 02/21/2008 2:10 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Fernando Guimaraes	00000	915848	043 PCT
2. POM Anthony Leitao	03718	944132	043 PCT
3. POM Julio Davila	24255	936437	043 PCT
4. An officer			043

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Frank Acosta	10855	934367	043 PCT
2. POM Rafael Montanez	26784	935337	043 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Anthony Leitao	Force: Anthony Leitao pointed his gun at § 87(2)(b)	
B.POM Anthony Leitao	Abuse: Anthony Leitao frisked § 87(2)(b)	
C.LT Fernando Guimaraes	Abuse: Fernando Guimaraes threatened § 87(2)(b) with the use of force.	
D. An officer	Force: An officer used physical force against § 87(2)(b)	
E.POM Julio Davila	Force: Julio Davila used pepper spray against § 87(2)(b)	
F. An officer	Discourtesy: An officer spoke rudely to § 87(2)(b)	

Synopsis

§ 87(2)(b) phoned IAB on February 16, 2008, to file this complaint on behalf of her son, § 87(2)(b). The CCRB received the complaint on February 21, 2008.

§ 87(2)(b) stated that around 8:00 PM on February 16, 2008, he drove the wrong way down a one-way street and was stopped by two officers, identified through investigation as PO Anthony Leitao and Lt. Fernando Guimaraes of the 43rd Precinct, at the corner of Bruckner Boulevard and White Plains Road in the Bronx. § 87(2)(b) stated that PO Leitao pointed his gun at him (**Allegation A**), and frisked him (**Allegation B**). He alleged that Lt. Guimaraes threatened him with the use of force (**Allegation C**), that an officer punched him while he was lying on the ground (**Allegation D**), and that an officer, identified through investigation as PO Davila, used pepper spray against him (**Allegation E**). § 87(2)(b) also alleged that one of the officers who transported him to the stationhouse called him an “asshole” (**Allegation F**).

§ 87(2)(b), § 87(2)(g)

Summary of Complaint

§ 87(2)(b) is an § 87(2)(b)-old Hispanic male with black eyes and black hair. He is 5’7” tall and weighs 150 pounds. § 87(2)(b) provided statements to medical staff on February 16, 2008, and an official statement to the CCRB on March 13, 2008 (encl. 8D).

§ 87(2)(b) stated that on February 16, 2008, at approximately 8:00 PM, he was at a Shell gas station at the corner of Virginia Avenue and Bruckner Boulevard in the Bronx. He had been looking for a particular drink, which the Shell station did not have. § 87(2)(b) exited the gas station and drove the wrong way on Virginia Avenue before making a right onto Bruckner Boulevard. § 87(2)(b) drove one block and pulled into another gas station at the corner of White Plains Road and Bruckner Boulevard. He did not notice any cars behind him, nor was he aware of any police presence. He exited his vehicle and saw PO1, identified through investigation as PO Anthony Leitao, approaching from the rear of his car. PO Leitao was a white or Hispanic male who was 6 feet tall, 230 pounds, and had short hair. § 87(2)(b) could not describe him further. PO Leitao pointed his gun at § 87(2)(b)’s face (**Allegation A**) and said, “Get back in your car.” A second officer, PO2, identified through investigation as Lt. Fernando Guimaraes, was on the other side of § 87(2)(b)’s car. Lt. Guimaraes was a white or Hispanic male; § 87(2)(b) could not describe him further.

§ 87(2)(b) entered his car as directed. He reached into his pocket to take out his wallet and identification. § 87(2)(b) heard Lt. Guimaraes say something. PO Leitao grabbed § 87(2)(b) by his sweatpants, causing them to fall down. PO Leitao patted § 87(2)(b) down and reached his hand inside the rear waistband of his boxers (**Allegation B**). Both officers then pushed § 87(2)(b) against the car, causing his face and shoulder to impact the car’s side. § 87(2)(b) was trying to turn around to see what was happening and PO Leitao said, “relax, calm down.” One of the officers, § 87(2)(b) was not sure who, placed a handcuff on his left wrist. § 87(2)(b) tried to turn around and said, “What’s going on, Officer, can you tell me what you’re taking me to the precinct for?” One of the officers, § 87(2)(b) believes it was Lt. Guimaraes, said, “Next time you move I’m putting your head through the fucking windshield” (**Allegation C**).

The officers then threw him face down on the ground, began punching him (**Allegation D**), and pepper sprayed him (**Allegation E**). He is unsure which officer did so. § 87(2)(b) tried to turn his head at one point and was punched in the right eye. He also remembers being hit in the back center of his head, the top left of his head, and just above his left ear. § 87(2)(b) stated he was being hit consistently for at least 5

minutes. He was sure that more than one person was hitting him, but did not see which officers struck him. Two officers then dragged him face-down across the ground, and someone finished placing him in handcuffs.

§ 87(2)(b) estimated that over 20 officers responded to the scene in 4-5 marked and unmarked cars, though he could not say when during the course of the interaction they arrived. He was placed in a marked car with two uniformed male officers, PO3 and PO4, whom he believes were white but could not describe further as he had just pepper sprayed. These officers were not involved in placing him under arrest. PO3, who was driving the car, called § 87(2)(b) an “asshole” and said he was a “disgrace to his mother,” (**Allegation F**). At first § 87(2)(b) was unsure which of the officers made these comments, and then asserted it was the car’s driver.

At the precinct § 87(2)(b) was thoroughly searched and placed in a holding cell. § 87(2)(b) heard an officer at the precinct ask a paramedic to examine him. The paramedic looked at § 87(2)(b) and said he was fine. However, § 87(2)(b) was later taken in an ambulance to § 87(2)(b) where they took his temperature and applied iodine to his cuts.

According to the ambulance call report, § 87(2)(b) told paramedics that he had been, “maced in the eyes after fighting with NYPD.” He also complained of abrasions he sustained during the fight. He had no other complaints at that time. According to his medical records, § 87(2)(b) was transported to the § 87(2)(b) of § 87(2)(b) where he complained of “abrasions and pain to the back of his left leg and left arm from getting into a fight with a police officer while being arrested.”

§ 87(2)(b) informed the CCRB that as a result of the incident, § 87(2)(b) had a swollen right eye, various cuts and abrasions on his face, a swollen left knee, and pain in his left shoulder.

§ 87(2)(b) stated that the officers found marijuana in his car, but that he was not in possession of marijuana at that time, nor had he made any drug transactions that evening. He also stated that besides trying to turn around while being handcuffed he could not remember doing anything that could be construed as resisting arrest, nor did he strike any officers. § 87(2)(b) returned home from Central Booking on February 18, 2007, at which time his mother took pictures of his injuries. § 87(2)(b) stated there were several other people present at the gas station at that time, including employees, but he could not provide any of their names or phone numbers.

Results of Investigation

Attempts to Locate Additional Witnesses

§ 87(2)(b) did not know anyone who witnessed the incident. The investigator conducted a field visit to the incident location on April 8, 2008. None of the employees present had witnessed the incident. § 87(2)(b), who would not provide his name, supplied the investigator with the phone number of § 87(2)(b) who may have witnessed the incident. However, this phone number was out of service, and a subpoena of telephone records did not provide any helpful information.

Officer Statement: PO Anthony Leitao (encl. 10F)

PO Anthony Leitao appeared at the CCRB on June 13, 2008. PO Leitao is a § 87(2)(b)-old white male with brown eyes and brown hair. He is 5’10” tall and weighs 205 pounds. On February 16, 2008, he worked from 5:30 PM until 2:05 AM. He was in plainclothes, and served as Lt. Guimaraes’s operator. The two patrolled the 43rd Precinct in an unmarked car on an anti-crime detail.

PO Leitao had the following entries in his memo book regarding this incident (encl. 10A): “1945 car stop White Plains and Bruckner Expressway. 1955: (10-92C) PO Acosta. § 87(2): En route to § 87(2)(b).”

Statements to Medical Professionals (encl. 10C)

According to PO Leitao’s medical records, he informed the paramedics who transported him to § 87(2)(b) “I think I was bit.” He further stated that he was wrestling a “perp” when he sustained a cut to his

left hand, and believed it was a human bite. He told medical personnel at § 87(2)(b) that he was involved in a fight while on duty, and that he believed that the injury to his left hand resulted from a human bite.

PO Leitao also made a brief statement which appears on his Line of Duty paperwork, which was completed on February 17, 2008. PO Leitao stated, "I went to frisk individual when perpetrator punched and caused a laceration to my hand (left) consistent with a human bite."

On February 16, 2008, around 7:45 PM, PO Leitao and Lt. Guimaraes were driving along the Bruckner Boulevard service road when they noticed § 87(2)(b) driving the wrong way on Virginia Avenue, a one-way street. § 87(2)(b) turned onto the Bruckner Boulevard service road and pulled into a Lukoil gas station located one block away, at the corner of Bruckner Boulevard and White Plains Road. PO Leitao pulled into the gas station behind § 87(2)(b) and turned on the car's emergency light located on the dashboard. § 87(2)(b) stopped his car and the officers approached his vehicle; PO Leitao approached the driver's side and Lt. Guimaraes approached the passenger's side. PO Leitao stated that they did not have their guns drawn.

As the officers approached, § 87(2)(b) exited his vehicle. PO Leitao ordered § 87(2)(b) back into his car. § 87(2)(b) re-entered his car, and proceeded to put his hands inside the waistband of his pants. PO Leitao stated that it appeared as though he was fidgeting with something, and may have placed something on the car seat under his butt. PO Leitao thought that § 87(2)(b) may have had a weapon. As a result, PO Leitao ordered him to step out of the vehicle. § 87(2)(b) exited the car and with his right hand punched PO Leitao on the left side of his neck. § 87(2)(b) then attempted to re-enter his car. PO Leitao grabbed at his waist and clothing to prevent him from getting away. Lt. Guimaraes came to the driver's side of the car and assisted PO Leitao in preventing § 87(2)(b) from entering the car. § 87(2)(b) kept swinging his arms around and attempting to elbow the officers. PO Leitao placed his left hand on § 87(2)(b)'s shoulder in an effort to restrain him. § 87(2)(b) bit PO Leitao's hand, breaking the skin and causing it to bleed. PO Leitao and § 87(2)(b) then fell to the ground together; PO Leitao fell on his side and injured his left wrist. PO Leitao was unsure if Lt. Guimaraes fell as well.

Lt. Guimaraes radioed for assistance. POs Montanez, Davila, and Acosta responded to the location, though PO Leitao was uncertain when they arrived. § 87(2)(b) was face down on the ground at this point, and PO Leitao and Lt. Guimaraes were attempting to place him in handcuffs. § 87(2)(b) had tensed up, and his hands were under his stomach. As a result, Lt. Guimaraes and PO Leitao were unable to place § 87(2)(b) under arrest until additional units arrived. At least 6 other officers and two other cars arrived at the scene; PO Leitao could not identify any of them besides PO Acosta, PO Davila, and PO Montanez. PO Leitao did not know who handcuffed § 87(2)(b) nor when exactly this took place. Once he was handcuffed, § 87(2)(b) was transported to the 43rd Precinct stationhouse. PO Leitao did not know who transported him.

PO Leitao stated that § 87(2)(b)'s sweatpants did not come down or partially come off during the incident. PO Leitao did not frisk or search § 87(2)(b) nor was he aware of anyone doing so. PO Leitao stated that he never pointed his gun at § 87(2)(b). PO Leitao was not aware of anyone using pepper spray on § 87(2)(b). PO Leitao stated that he did not punch or strike § 87(2)(b) nor did he see anyone else doing so. PO Leitao did not notice that § 87(2)(b) had any injuries at the time of the incident. He could not describe how § 87(2)(b) sustained various bruises and abrasions on his body and face, or a black eye. PO Leitao did not verbally threaten § 87(2)(b) with the use of force, nor did he hear any other officer do so. He did not threaten to put § 87(2)(b)'s head "through a windshield," nor did he use any profanity. PO Leitao stated that a gas station attendant most likely saw the incident; he did not notice anyone who stopped to watch the incident as it took place.

As a result of the incident, PO Leitao sustained a bruise on his neck where § 87(2)(b) punched him, a bite mark on his hand, and a bruise on his left wrist. An ambulance transported PO Leitao from the incident location to § 87(2)(b). PO Montanez accompanied him. At the hospital, X-rays were taken of his hand, and he received antibiotics and a tetanus shot.

Officer Statements: Lt. Fernando Guimaraes (encl. 9C)

Lt. Fernando Guimaraes appeared at the CCRB on June 17, 2008. Lt. Guimaraes is a § 87(2)(b)-old Hispanic male with black hair and brown eyes. He is 5'8" tall and weighs 170 pounds. On February 16, 2008, Lt. Guimaraes worked from 4:00 PM until 12:45 AM as the special operations lieutenant, which on that night entailed supervising the precinct's anti-crime team. He was wearing jeans and a sweater, and PO Leitao was working as his driver. They were in unmarked car § 87(2)(b), which is a gold Ford Crown Victoria.

Lt. Guimaraes had the following entries in his memo book regarding this incident: "1955: 1 under by 43 A/C." (encl. 9A)

Shortly before 8:00 PM on February 16, 2008, Lt. Guimaraes and PO Leitao were driving west on the Bruckner Boulevard service road when they observed a vehicle coming the wrong way along Virginia Avenue. Lt. Guimaraes saw the car traveling on Virginia Avenue for about 100 feet before it made a right onto Bruckner Boulevard, crossed White Plains Road, and pulled into a Lukoil gas station located at that corner. Lt. Guimaraes stated that there are a lot of stolen vehicles which are dumped in the area, and suspected the car had been stolen. Lt. Guimaraes requested that another anti-crime unit which he had just seen heading the opposite direction on Bruckner Boulevard assist them in making the stop. The second anti-crime car contained PO Davila and PO Montanez. PO Leitao and Lt. Guimaraes pulled into the gas station behind the car, and turned their dashboard light and siren on. Both officers exited the police car and approached the vehicle; Lt. Guimaraes approached the passenger's side and PO Leitao approached the driver's side. Their guns were not drawn as they approached the car. The car's operator, § 87(2)(b) jumped out of the car, and both officers ordered him to return, which he did.

As he approached the vehicle, Lt. Guimaraes observed § 87(2)(b) with his right hand completely inside the waistband of his sweatpants. Lt. Guimaraes did not know if he was reaching for a weapon or trying to hide some other contraband. Lt. Guimaraes told PO Leitao that he could not see his right hand. PO Leitao opened the car door and pulled § 87(2)(b) out of the car. Lt. Guimaraes went around the back of the car to assist PO Leitao. Lt. Guimaraes was about 6 feet away when he saw § 87(2)(b) punch PO Leitao on the left side of his neck. § 87(2)(b) then tried to re-enter his vehicle, and the officers struggled to prevent him from doing so. PO Leitao grabbed § 87(2)(b)'s arms, and the two officers attempted to place § 87(2)(b) in handcuffs. Both officers and § 87(2)(b) then fell to the ground. § 87(2)(b) "did not want to be placed under arrest." He was kicking his arms and legs, and bit PO Leitao in the hand at this time. § 87(2)(b) was lying face down on the floor at this point and Lt. Guimaraes was on the ground as well and had § 87(2)(b) in a "bear hug." PO Leitao was attempting to place § 87(2)(b) in handcuffs, but § 87(2)(b) "clinched" one of his arms under his body. At one point, Lt. Guimaraes punched § 87(2)(b) in the shoulder of the arm he had locked under his body with a closed fist. Lt. Guimaraes did this in an effort to "loosen" § 87(2)(b)'s arm, which would allow the officers to place him in handcuffs. Lt. Guimaraes witnessed another officer punch § 87(2)(b) in the same shoulder for the same purpose during the incident, but he did not know who did this.

About thirty seconds into the interaction PO Montanez and PO Davila arrived at the location and assisted in trying to place § 87(2)(b) in handcuffs. Lt. Guimaraes did not know if these officers arrived before or after § 87(2)(b) bit PO Leitao. Someone pepper sprayed § 87(2)(b). Lt. Guimaraes did not know exactly when during the interaction this took place, or who did this. Despite having been pepper sprayed, § 87(2)(b) continued resisting by kicking his legs, "flaring" his arms, and refusing to place his hands behind his back. PO Leitao and Lt. Guimaraes were able to place one handcuff on § 87(2)(b) but they were unable to place the second handcuff on him right away. One of the officers, Lt. Guimaraes did not know whom, called for assistance, and additional units responded to the scene. Lt. Guimaraes could not remember who else was there beside PO Leitao, PO Montanez, and PO Davila. Someone finished placing § 87(2)(b) in handcuffs; Lt. Guimaraes did not know which officer did this, but said that it was a collective effort.

§ 87(2)(b) continued behaving "violently" even after he was placed in handcuffs. While one of the officers held onto his arms, § 87(2)(b) banged his head against his car, and attempted to "walk up" the car by placing his feet on its side. Lt. Guimaraes stated that § 87(2)(b)'s "actions were not rational." The entire struggle lasted for about five minutes. One of the other officers frisked § 87(2)(b) once he was

placed in handcuffs, but Lt. Guimaraes could not remember who. Because § 87(2)(b) continued to behave “violently,” Lt. Guimaraes ordered that he be transported to the 43rd Precinct in a marked RMP. He did not know which officers transported him. Once at the stationhouse, Lt. Guimaraes ordered an ambulance for § 87(2)(b) to treat him for having been pepper sprayed.

Lt. Guimaraes noticed that § 87(2)(b) had bruises on his face after he was placed in handcuffs. Lt. Guimaraes stated that § 87(2)(b) most likely incurred these injuries during the struggle, and while § 87(2)(b) was rolling around on the floor. As a result of the incident, Lt. Guimaraes sustained bruises on his knees, scrapes on his hands, and his jeans were ripped. PO Leitao missed work for two weeks as a result of the bite on his hand. Lt. Guimaraes did not know if § 87(2)(b)'s sweatpants came down during the struggle. Lt. Guimaraes stated that neither he nor any other officer drew a gun during the incident. He said that, “From the moment we stopped him we were engaged in a struggle, and that it would have been very foolish for anyone to draw their gun.”

Besides the closed-fisted punch to § 87(2)(b)'s shoulder, Lt. Guimaraes stated that he did not otherwise strike, punch, or kick § 87(2)(b). He noted that as he was on the ground with § 87(2)(b) it would have been impossible to kick him. Besides the one other officer he saw punch § 87(2)(b) in the shoulder, he did not see anyone strike him in any other way. During the incident, the officers issued commands to § 87(2)(b) such as, “stop resisting,” and, “let me see your hand.” Lt. Guimaraes did not hear anyone threaten § 87(2)(b) or say anything along the lines of, “I’m going to put your head through the fucking windshield.” He did not hear anyone use profanity. Lt. Guimaraes did not remember § 87(2)(b) speaking at all during the incident. He stated that he did not issue any threats to § 87(2)(b) nor did he use profanity during the incident. Afterwards, the officers discovered marijuana and a razor blade in § 87(2)(b)'s car. Lt. Guimaraes also noted that § 87(2)(b) had left his car in neutral, and stated that if the car had rolled during the struggle someone could easily have been injured.

Officer Statement: PO Frank Acosta (encl. 11G)

PO Frank Acosta appeared at the CCRB on August 19, 2008. He is a § 87(2)(b)-old Hispanic male with black hair and brown eyes. He is 5’9” tall and weighs 200 pounds. On February 16, 2008, PO Acosta worked from 5:30 PM until 2:05 AM. He was assigned to work with the precinct’s anti-crime team. He worked in unmarked car § 87(2)(b) with PO Davila and PO Montanez. PO Acosta was dressed in plainclothes.

PO Acosta had the following entries in his memo book (encl. 11A): “1957: 1 under @ Bruckner and White Plains. 2020:84@ SH. § 87(2)(b): PO Leitao en route to § 87(2)(b) for injuries. § 87(2)(b): Perp en route to hospital § 87(2)(b) for injuries. 0006: Begin Online. 0130: fingerprint perp. 0200: Begin paperwork. 0400: Begin vouchers.”

PO Acosta completed the arrest report, § 87(2)(b) (encl. 11C). The report states that PO Acosta was informed by PO Leitao that around 7:57 PM on February 16, 2008, he witnessed § 87(2)(b) driving the wrong way on Virginia Avenue. § 87(2)(b) struck PO Leitao in the neck when he approached his vehicle, and bit PO Leitao in the left hand. § 87(2)(b) continued to fight the officers as they attempted to restrain him, and attempted to jump back into his car. § 87(2)(b) was charged § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

PO Acosta also completed the complaint report, which is consistent with the arrest report (encl. 11E).

Just before the incident took place, PO Acosta, PO Davila, and PO Montanez had confiscated an individual’s vehicle. PO Acosta was driving alone in that vehicle somewhere along Bruckner Boulevard toward the stationhouse when he heard Lieutenant Guimaraes call for assistance over the radio. PO Acosta made a U-turn on Bruckner Boulevard and drove to the incident location. It took longer than normal for PO Acosta to arrive at the location because he was driving a civilian’s vehicle which did not have lights or sirens and he therefore had to follow traffic laws. He estimated that he arrived at the location two minutes after he heard the call for assistance.

Upon arriving at the location, PO Acosta saw § 87(2)(b) who was struggling to re-enter his car which was parked just outside the door of the gas station's store. Lt. Guimaraes and PO Leitao were struggling to pull him away from the vehicle. PO Acosta believed that PO Davila and PO Montanez were already at the location when he arrived, but he was not completely sure. He could not remember what they were doing at the time he arrived. PO Acosta ran toward them, at which time he saw § 87(2)(b) attempting to reach his left hand inside the car. PO Acosta grabbed § 87(2)(b)'s left hand and attempted to bring it behind his back. The officers then "brought § 87(2)(b) to the ground." PO Acosta was unsure whether this was a result of a purposeful action on the part of one of the officers, or if § 87(2)(b) fell to the ground. Once on the ground, § 87(2)(b) continued to struggle by kicking, and flailing his arms. He was lying face-down and locked one or both of his arms under chest so that he could not be handcuffed. PO Acosta remained focused on trying to bring § 87(2)(b)'s left hand behind his back. He could not describe what any of the officers around him were doing, as he was focused solely on § 87(2)(b).

Other officers responded to the location, though PO Acosta could not remember who. Once additional units arrived, the officers were able to place § 87(2)(b) in handcuffs; PO Acosta did not remember who in particular did this. PO Acosta did not recall § 87(2)(b)'s behavior after he was placed in handcuffs. § 87(2)(b) was transported to the 43rd Precinct stationhouse; PO Acosta did not know who did this. After § 87(2)(b) was placed under arrest PO Acosta performed an inventory search on his vehicle and discovered an open razor blade on the steering column and marijuana in plain view on the car's console. At the stationhouse, PO Acosta noticed that § 87(2)(b) had some bruises on his face. He stated that § 87(2)(b) most likely sustained these injuries as a result of the struggle, possibly when he was struggling on the ground.

Besides tugging § 87(2)(b) away from the car and pulling his hands behind his back, PO Acosta did not use any force on § 87(2)(b) nor did he see any other officer use any other force against him. PO Acosta did not draw his gun, nor did any other officer on the scene. PO Acosta did not use pepper spray against § 87(2)(b) and he did not believe that any other officer had done so. PO Acosta stated that he did not punch, kick, or strike § 87(2)(b) and did not see any other officer do so. PO Acosta stated that verbal commands were most likely issued to § 87(2)(b) but he did not remember specifically what was said. PO Acosta stated that neither he nor any of the officers present used profanity or threatened to hurt § 87(2)(b).

Officer Statement: PO Julio Davila (encl. 12C)

PO Julio Davila appeared at the CCRB on June 6, 2008. PO Davila is a § 87(2)(b)-old Hispanic male with black hair and brown eyes. He is 5'10" tall and weighs 155 pounds. On February 16, 2008, PO Davila worked from 5:30 PM until 2:05 AM the following morning. He and his partner, PO Montanez, were assigned to precinct anti-crime which consisted of patrolling the 43rd Precinct. They were dressed in plainclothes and driving a black unmarked Chevrolet Impala, § 87(2)(b).

PO Davila had the following entries in his memo book regarding this incident (encl. 12A): "PO Acosta, PO Montanez. 1957: 1 under by PO Acosta @ White Plains and Bruckner Blvd."

Shortly before 8:00 PM on February 16, 2008, PO Montanez and PO Davila were driving eastbound on Bruckner Boulevard in the vicinity of White Plains road when they received a call for assistance from Lt. Guimaraes. PO Montanez, who was operating the vehicle, made a U-turn and drove toward White Plains road. When they arrived at the incident location which was a Lukoil gas station at the corner of Bruckner Boulevard and White Plains Road, PO Davila observed Lt. Guimaraes and PO Leitao struggling with § 87(2)(b) at the side of § 87(2)(b)'s vehicle which was parked near the station's store. There were no other officers at the scene at that time. § 87(2)(b) was flailing his arms and struggling against the officers while PO Leitao was attempting to hold onto one of his arms and Lt. Guimaraes attempted to restrain him. PO Davila exited the vehicle and ran toward the three men while PO Montanez parked the car on Bruckner Boulevard. In the time it took to reach their side, Lt. Guimaraes, PO Leitao, and § 87(2)(b) had fallen to the floor; PO Davila was uncertain as to how this took place. § 87(2)(b) at this point was kicking and punching at the officers, and in general flailing his limbs. All three officers attempted to restrain § 87(2)(b) and bring his arms behind his back so that he could be handcuffed. § 87(2)(b) was lying on his stomach and had pinned one of his arms under his chest to avoid being handcuffed. § 87(2)(b) was punching at the officers with his other arm and kicking with his legs. PO Leitao then stated that § 87(2)(b)

had bitten his hand. Upon hearing this, PO Davila removed his pepper spray from his holster and fired it at § 87(2)(b)'s face. PO Leitao held onto one of § 87(2)(b)'s arms while Lt. Guimaraes attempted to pull his other arm behind his back. § 87(2)(b) continued to struggle, however. PO Davila could not recall exactly what his partner was doing to restrain § 87(2)(b).

One of the officers, PO Davila did not know who, had called for assistance. Many other officers arrived, though PO Davila could not name anyone present. Once additional officers arrived, the officers were able to place § 87(2)(b) in handcuffs. PO Davila did not know who placed § 87(2)(b) in handcuffs. § 87(2)(b) was then transported to the stationhouse; PO Davila did not know who transported him. PO Davila did not recall § 87(2)(b) saying anything during the incident. After going to the stationhouse, § 87(2)(b) was taken to the hospital because he had been pepper sprayed. PO Davila did not know how § 87(2)(b)'s reported injuries were sustained. PO Davila stated that none of the officers, including himself, had their guns drawn during the incident. PO Davila did not know if § 87(2)(b)'s sweatpants came off or were partially down during the incident. PO Davila did not believe that § 87(2)(b) had been thrown or placed against a car; he stated that § 87(2)(b) was placed in handcuffs while he was lying face down on the ground. PO Davila stated that there was no profanity used on the scene by any of the officers, including himself, and that no one issued any threats to § 87(2)(b). Neither PO Davila, nor any other officer punched, kicked, or struck § 87(2)(b). No one referred to § 87(2)(b) in a derogatory way such as calling him "asshole," or saying he was a "disgrace to his mother." PO Davila did not search or frisk § 87(2)(b) on the scene. He did not recall if a crowd formed to watch the incident, but stated that he believed a gas station employee witnessed the incident.

Officer Statement: PO Rafael Montanez (encl. 13C)

PO Rafael Montanez appeared at the CCRB on June 4, 2008. PO Montanez is a § 87(2)(b)-old Hispanic male with brown hair and brown eyes. He is 5'8" tall and weighs 220 pounds. On February 16, 2008, PO Montanez worked from 5:30 PM until 2:05 AM the following morning. He and his partner, PO Davila, were assigned to precinct anti-crime which consisted of patrolling the 43rd Precinct. They were dressed in plainclothes and driving a black unmarked Chevrolet Impala, § 87(2)(b). PO Montanez operated the vehicle.

PO Montanez had the following entries in his memo book regarding the incident (encl. A): "1957: 1 under PO Acosta @ White Plains Rd/Bruckner Blvd. 0205: End of tour."

Shortly before 8:00 PM on February 16, 2008, Lt. Guimaraes, who was working as the special operations lieutenant, radioed for assistance at the corner of Bruckner Boulevard and White Plains Road. When he and PO Davila arrived at the location, PO Montanez saw § 87(2)(b) Lt. Guimaraes, and PO Leitao all engaged in a struggle near a car parked in a Lukoil gas station. The three of them were standing, § 87(2)(b) was flailing his arms, and PO Leitao was attempting to place him in handcuffs. Either PO Leitao or Lt. Guimaraes was holding on to one of § 87(2)(b)'s arms. PO Montanez and PO Davila exited the car together and ran toward the men. Before PO Montanez had reached them, all three men fell to the ground; PO Montanez did not know how this took place. § 87(2)(b) was lying face down on the ground and had pinned his left hand under his waist so that the officers could not handcuff him. PO Montanez tried to pull his arm behind his back, but § 87(2)(b) was too strong. PO Montanez could not recall what else § 87(2)(b) did at that time. PO Montanez did not know if § 87(2)(b) struck any of the officers present. The officers continued struggling to place § 87(2)(b) in handcuffs until additional officers arrived, around 2 minutes later. PO Montanez stated that no physical force was used against § 87(2)(b) besides grabbing his arms in an attempt to place him in handcuffs. He did not know who handcuffed § 87(2)(b). Once he was in handcuffs, § 87(2)(b) was transported to the stationhouse; PO Montanez did not know who transported him. PO Montanez did not know what other officers or supervisors responded to the location.

Some time before PO Montanez arrived at the scene, § 87(2)(b) had bitten PO Leitao on his hand. Someone called an ambulance for PO Leitao and PO Montanez accompanied him to the hospital.

PO Montanez stated that § 87(2)(b) was fully clothed when he arrived, and that his pants did not come off. He did not notice that § 87(2)(b) had any injuries at the time. He did not know how § 87(2)(b) could have sustained a black eye or cuts and abrasions on his face. PO Montanez stated that no officer on the scene, including himself, drew his or her gun. PO Montanez did not know whether or not during the course of the

arrest § 87(2)(b) was placed against a car. PO Montanez stated that no officer threatened § 87(2)(b) with the use of force or said anything similar to, “The next time you move I’m putting your head through the fucking windshield.” He did not see any officer punch, kick, or strike § 87(2)(b) in any way, and PO Montanez stated that he did not do so. PO Montanez did not think that anyone used pepper spray on § 87(2)(b) but he was uncertain. PO Montanez did not hear anyone refer to § 87(2)(b) in a derogatory manner. He did not hear anyone call him an “asshole,” or say that he was a “disgrace to his mother.”

Medical Records

§ 87(2)(b) (encl. 14A-N)

The Ambulance Call Report states that around § 87(2)(b) on § 87(2)(b), paramedics responded to the 43rd Precinct stationhouse to care for § 87(2)(b). § 87(2)(b) complained that his eyes hurt because he had been pepper sprayed, and that he had sustained various abrasions secondary to fighting with the police. The emergency medical technician noted abrasions on the right side of his face and his left frontal lobe.

The physician notes state that due to an altercation with police, § 87(2)(b) had abrasions on his face, right wrist, left scapula, the left side of his neck, and his left shin. § 87(2)(b) did not wish to discuss his interaction with the doctor or social services. § 87(2)(b) was released with a prescription for ibuprofen.

PO Anthony Leitao (encl. 15A-I)

The Pre-hospital Care Report states that on § 87(2)(b), paramedics responded to the 43rd Precinct stationhouse. PO Leitao had a laceration on his left wrist secondary to a human bite.

Records from § 87(2)(b) state that PO Leitao complained of moderate pain to his left hand due to a human bite. An abrasion with bruising was noted on his left hand. The doctor’s notes that that PO Leitao had redness and swelling on the dorsum on his left hand. X-rays were taken of PO Leitao’s hand; the results revealed no further injury. PO Leitao was prescribed antibiotics and received a tetanus shot.

Communications Records

SPRINT (encl. 16A)

The SPRINT indicates that at 7:48 PM on February 16, 2008, LT1 from the 43rd Precinct reported that he had arrived at White Plains Road and Bruckner Boulevard, and that no further units were necessary. At 7:53 PM LT1 verified the arrest of one individual. At 7:55 PM he requested an ambulance to assist an officer who had suffered a minor injury. At 7:56 PM Ambulance § 87(2)(b) was assigned to the job, and arrived at the location by § 87(2)(b). An individual was transported to § 87(2)(b), and another individual was transported to § 87(2)(b). At 11:45 PM LT1 completed a complaint report, and resumed patrol.

NYPD Documents

Line of Duty Report (encl. 17A)

On February 17, 2008, a Line of Duty report was completed for PO Leitao. § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

AIDED Report Worksheet (encl. 18A)

PO Montanez completed an AIDED report for PO Leitao. § 87(2)(b)

§ 87(2)(b)

Medical Treatment of Prisoner Report (encl. 18C)

The medical treatment of prisoner report states that § 87(2)(b) was cleansed by ER staff. He had injuries to his face and side. It also notes that § 87(2)(b) has a history of Asthma.

Property Vouchers (encl. 20A)

PO Acosta vouchered one metal razor, and one marijuana cigarette as arrest evidence.

Prisoner Holding Pen Roster (encl. 21A)

At 8:40 PM § 87(2)(b) was placed in a holding cell, where he remained until 3:25 AM when he was transported to Bronx Central Booking in Van #5747.

Command Log (encl. 22A)

The 43rd Precinct command log for February 16, 2008, notes that PO Acosta placed § 87(2)(b) under arrest § 87(2)(b)

§ 87(2)(b) arrived at the precinct at 8:30 PM that evening, and was transported to Central Booking at 3:25 AM.

Roll Call (encl. 23A)

The 43rd Precinct Tour 3 Roll Call for February 16, 2008 lists Lt. Guimaraes as having been on duty from 4:00 PM until 12:04 AM. PO Acosta, PO Davila, PO Montanez and PO Leitao were assigned to anti-crime and worked from 5:30 PM until 2:05 AM.

Status of Court Case (encl. 25A)

§ 87(2)(b)) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian Criminal Conviction History (encl. 25A-S)

§ 87(2)(b)) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Officer Histories (encl. 2A-C)

The CCRB has never substantiated an allegation of misconduct against Lt. Guimaraes, PO Leitao, of PO Davila.

Conclusions and Recommendations**Allegations not Pleaded**

§ 87(2)(b) stated that in an effort to remove him from his car, PO Leitao grabbed him by the sweatpants, causing them to come down. § 87(2)(b), § 87(2)(g)

Officer Identification

§ 87(2)(b) stated that the officer who initially approached the driver's side of his vehicle pointed his gun in his face, and frisked him. He described this officer as a white or Hispanic male around 6 feet tall and weighing 230 pounds. PO Leitao acknowledged that he initially approached the driver's side of § 87(2)(b)'s vehicle during the car stop. PO Leitao is a 5'10" tall white male weighing 205 pounds. § 87(2)(g)

§ 87(2)(b) stated that the officer who initially approached the passenger's side of his vehicle threatened him with the use of force. He described this officer as a white or Hispanic male. Lt. Guimaraes acknowledged that during the initial car stop, he was the officer who approached the passenger's side of § 87(2)(b)'s vehicle. § 87(2)(g)

§ 87(2)(b) alleged that he was punched in the head while lying facedown on the ground. He did not see the officer or officers who did this. Lt. Guimaraes acknowledged punching § 87(2)(b) in the shoulder, but stated that he did not otherwise strike him. § 87(2)(g)

§ 87(2)(b) stated that an officer pepper sprayed him in the face. PO Davila acknowledged that he used pepper spray against § 87(2)(b) § 87(2)(g)

§ 87(2)(b) alleged that one of the officers who transported him to the stationhouse referred to him as an “asshole.” § 87(2)(b) was unable to describe this officer in any detail as he had just been pepper sprayed. None of the officers interviewed knew who transported § 87(2)(b) to the stationhouse. In addition, there is no record documenting what unit transported him, or even which units responded to the location.

§ 87(2)(b)

Undisputed Facts

It is undisputed that § 87(2)(b) drove the wrong way on a one-way street, an infraction for which Lt. Guimaraes and PO Leitao stopped him. It is undisputed that § 87(2)(b) reached his hand inside either his pants’ pocket or waistband after the officers stopped him. It is undisputed that PO Davila used pepper spray on § 87(2)(b)

Disputed Facts

§ 87(2)(b), § 87(2)(g)

Assessment of Evidence

§ 87(2)(b) said during his interview that when he pulled into the gas station he did not realize that police officers were stopping him, and he exited his vehicle, at which point PO Leitao pointed his gun at him. Both PO Leitao and Lt. Guimaraes denied that this was the case, and all officers interviewed stated that no member of service drew his or her gun during the incident. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) stated that PO Leitao frisked him. PO Leitao stated that he did not frisk § 87(2)(b) PO Leitao’s statement which appears on his Line of Duty paperwork says, § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g) PO Leitao stated during his interview that § 87(2)(b) had reached his hand inside his pants and appeared to place something under his butt. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) stated that he did not resist arrest. However, all five officers interviewed stated that § 87(2)(b) kicked his legs, flailed his arms, and clinched his arm under his chest so that he could not be handcuffed. In addition, Lt. Guimaraes and PO Leitao both stated that § 87(2)(b) punched PO Leitao on the left side of his neck. Furthermore, the officer statements and PO Leitao’s medical records indicate that § 87(2)(b) bit PO Leitao in the hand during the arrest. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) asserted that Lt. Guimaraes said, “I’m going to put your head through the fucking windshield.” All officers denied that Lt. Guimaraes made such a statement during the incident. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) stated that he was punched in the head while lying facedown on the ground. He could not identify or describe the officer or officers who did this. Lt. Guimaraes acknowledged that he punched § 87(2)(b)'s shoulder in an attempt to loosen his arm so that he could be handcuffed. Lt. Guimaraes stated that he saw another officer punch § 87(2)(b) in the arm, but could not identify this officer. All other officers stated that they did not strike § 87(2)(b) or see anyone strike him. However, photos of § 87(2)(b) taken the day after his arrest document swelling around his right eye, which he stated was the result of a punch.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) alleged that one of the officers who transported him to the stationhouse referred to him as an "asshole." None of the officers interviewed knew who transported § 87(2)(b) to the stationhouse.

§ 87(2)(g)

Allegation A: PO Leitao pointed his gun at § 87(2)(b)

§ 87(2)(b) alleged that PO Leitao pointed his gun at him when § 87(2)(b) exited his vehicle. According to Kamins 5.03, "The police are permitted to draw their weapons as they approach a lawfully stopped vehicle when they observe facts that warrant a belief that such action is reasonable." § 87(2)(b), § 87(2)(g)

Allegation B: PO Leitao frisked § 87(2)(b)

§ 87(2)(b) stated that after PO Leitao pulled him out of the car, he frisked him. Both PO Leitao and Lt. Guimaraes stated that after § 87(2)(b) re-entered his car at their command, he placed his hand inside the waistband of his pants. Both officers stated that they suspected § 87(2)(b) had a weapon. § 87(2)(b) stated that he reached his hand into his pocket to remove his wallet. According to Kamins 5.03, "If the officer observes the motorist furtively reaching for an unidentifiable bulge, a frisk would be permissible." § 87(2)(b), § 87(2)(g)

Allegation C: Lt. Guimaraes threatened § 87(2)(b) with the use of force.

§ 87(2)(b) alleged that Lt. Guimaraes threatened him with the use of force. § 87(2)(b), § 87(2)(g)

Allegation D: An officer punched § 87(2)(b)

§ 87(2)(b) alleged that an officer or officers he did not see punched him several times in the head. § 87(2)(b), § 87(2)(g)

According to Patrol Guide Procedure 203-11, "Only that amount of force necessary to overcome resistance will be used to affect an arrest..." § 87(2)(b), § 87(2)(g)

Allegation E: PO Davila used pepper spray against § 87(2)(b)

§ 87(2)(b) stated that an officer pepper sprayed him. PO Davila acknowledged that after § 87(2)(b) bit PO Leitao, he pepper sprayed § 87(2)(b) in the face. § 87(2)(b), § 87(2)(g)

Allegation F: An officer spoke rudely to § 87(2)(b)

§ 87(2)(b) alleged that one of the officers who transported him to the stationhouse referred to him as an “asshole.” § 87(2)(b) was unable to provide a description of this officer because he had just been pepper sprayed. None of the officers interviewed knew who transported § 87(2)(b) and there is no record indicating who did. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: